

# ATOZ ALERT

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## EU Commission adopted a DAC9 proposal to ease filing obligations under the Pillar Two directive

8 November 2024

On 28 October 2024, the EU Commission put forward a [directive proposal](#) (the “DAC9 Proposal”) amending the [Directive on administrative cooperation in the field of taxation](#) (“DAC”) for the ninth time to make it easier for companies to fulfil their filing obligations under the 2022 Pillar Two Directive which aims to ensure a global minimum level of taxation for multinational enterprise (“MNE”) groups and large-scale domestic groups (“LSDGs”) in the EU.

The DAC9 Proposal aims to ensure the uniform and cross-cutting implementation of the rules on filing the ‘Top-up tax information return’ (“GloBE Information Return”) across Member States and enables MNEs to fulfil their Pillar Two filing obligations only once in the Member State of the ultimate parent entity (“UPE”) or of a designated filing entity as opposed to having to file a GloBE Information Return in each Member State where constituent entities are located.

To implement reporting obligations and an exchange of information framework that supports the Pillar Two Directive, the DAC9 Proposal:

- introduces a standard form, in line with the one developed by the Inclusive Framework of the OECD, which MNEs and LSDGs will have to use to report certain tax-related information in a centralised manner; and
- sets up a system for tax authorities to exchange information with each other.

For once, DAC is not amended by the addition of new reporting obligations. The DAC9 Proposal rather supports the practical implementation of the reporting obligations under the Pillar Two Directive. This proposal is consistent with and contributes to the Commission’s efforts to rationalise and simplify reporting obligations as well as to reduce the administrative burden for businesses, which is set out as a priority in the [Commission work programme 2024](#).

We will analyse below the DAC9 Proposal and its implications for Luxembourg companies.

## Reporting obligations under the DAC9 proposal

Under the Pillar Two Directive, each constituent entity of an MNE group must, in principle, file its GloBE Information Return in the Member State where it is located. This means that each constituent entity of an MNE group needs to file extensive reports with its local tax authorities, that would also include high-level information on the MNE group to which it belongs. However, the Pillar Two Directive provides for a derogation from this local filing requirement when the UPE (or a designated filing entity) files the GloBE Information Return on behalf of the entire MNE group, subject to the condition that an exchange of information between Member States is put in place.

On this basis, the DAC9 Proposal should enable the central filing of the GloBE Information Return as opposed to the local filing of that return in each jurisdiction that is implementing the Pillar Two rules. For that purpose, the DAC9 Proposal provides that each Member State shall take the necessary measures to require the UPE, or the designated filing entity, of an MNE group that is located in its territory to file the GloBE Information Return in the form provided for by the proposal. The ‘designated filing entity’ is the constituent entity, other than the UPE, that has been appointed by the MNE group or LSDG to fulfil the filing obligations on behalf of the MNE group or the LSDG.

The GloBE Information Return shall, in principle, be filed no later than 15 months after the last day of the reporting fiscal year, or no later than 18 months after the last day of the reporting fiscal year that is the transition year. The transition year is the first fiscal year in which an MNE group or an LSDG falls within the scope of the Pillar Two Directive.

### *Standard template for the filing of the top-up tax information under the DAC9 Proposal*

The Pillar Two Directive provides for the filing of the GloBE Information Return in a standard template. The OECD developed such [standard template](#), which contains the information a tax administration needs in order to perform an appropriate risk assessment and to evaluate the correctness of a constituent entity’s top-up tax liability. The DAC9 Proposal sets out, a standard form, in line with the one developed by the OECD, for the filing of the GloBE Information Return in a new annex to the DAC, Annex VII.

## Exchange of information framework under the DAC9 Proposal

According to the DAC9 Proposal, when a Member State receives GloBE Information Returns from the reporting entities, they should communicate the relevant specific parts of these GloBE Information Returns to the other Member States, no later than three months after receipt, in accordance with the dissemination approach approved by the OECD according to which implementing jurisdictions with taxing rights under the Pillar Two rules would receive the data relevant to them.

As a result, a Member State receiving GloBE Information Returns will have to share:

- the full GloBE Information Return to the Member State of the UPE of the MNE group;
- the full general section of the GloBE Information Return to all Member States that have implemented a qualified income inclusion rule (“IIR”) or a qualified under-taxed payment rules (“UTPR”) or both (Implementing Member States);
- the relevant parts of the general section of the GloBE Information Return to the qualified domestic top-up tax (“QDMTT”)-only Member States:
  - o where constituent entities of the MNE group are located;
  - o where a joint venture or a member of a joint venture group of the MNE is located if the QDMTT is imposed on joint ventures in the jurisdiction);
  - o in situations where the QDMTT is imposed on a stateless constituent entity of the MNE group in the jurisdiction.
- Jurisdictional sections should be provided to the Member States with taxing rights under the Pillar Two Directive.

The competent authority of a Member State shall exchange the GloBE Information Returns received as soon as possible and, in any case, no later than three months after the filing deadline for the relevant reporting fiscal year. In the first year of operation, the deadline for communication of the reports should be prolonged to six months after receipt to accommodate any delays in the new system of exchange. When the GloBE Information Return is received after the filing deadline, a Member State shall exchange the reports no later than three months following the date it is received.

Under the Pillar Two Directive, Member States in which no more than twelve MNE groups are headquartered can elect not to apply the Pillar Two IIR and UTPR for six consecutive fiscal years beginning from 31 December 2023. Such Member States should only start applying the rules on exchange of GloBE Information Returns when the period of election ends.

#### *Unreceived or incorrect top-up tax information*

If a competent authority does not receive an exchange that was expected pursuant to a notification from an MNE, it should notify the competent authority that was expected to send the information of the missing exchange. The latter competent authority should without delay determine the reason for not exchanging the relevant information and should inform the competent authority that notified the missing exchange within one month, including the expected new date for the exchange.

If the information is not received by the new date for exchange, it should be considered that the central filing has not taken place and the competent authority that notified the missing exchange should require the MNE's constituent entity to file the GloBE Information Return locally. It is, however, unclear at this stage, whether the GloBE Information Return filed by the constituent entity will be related to the constituent entity only or will cover all entities of its MNE group (and thus be considered as a central filing). Indeed, the definition of the top-up tax return under the DAC9 proposal refers to the collective tax return filed by the UPE or the designated filing entity.

The competent authorities should also notify each other when there is reason to believe that the information included in a GloBE Information Return is not correct and requires adjustments. If the notified competent authority agrees that the information in the GloBE Information Return requires corrections, it shall take, without delay, appropriate measures to obtain such corrected information from the concerned UPE or designated filing entity. Such corrections should be exchanged without undue delay with all competent authorities for which such information is subject to exchange. At this stage, the DAC9 Proposal does not provide for any rule in case of disagreement by the notified competent authority or by the concerned UPE or designated filing entity on the adjustments/corrections to be made.

## Penalties

According to the DAC9 Proposal, the penalties provided for non-compliance to the provisions of the proposal, once implemented, shall be effective, proportionate and dissuasive. Currently, in Luxembourg the penalties for non-compliance with the DAC rules amount, in principle, to a maximum of 250,000 Euros.

## Implications

Without the DAC9 Proposal, each company that forms part of an MNE group has to file a GloBE Information Return in the jurisdiction where it is located, which can be time-consuming and complicated. Under the DAC9 Proposal, MNE groups located in various EU jurisdictions will only have to file one GloBE Information Return, at central level in one EU Member State, for the entire group. This proposal is thus welcome as it should in theory significantly simplify the filing process and reduce the administrative burden for European businesses. Under the DAC9

Proposal the reporting is only done once for the whole MNE, and the constituent entities are then exempted from filing reports themselves locally.

However, this proposal raises a few questions. Indeed, it is unclear at this stage whether the central filing will be mandatory or optional, so that MNE groups can choose how they operate. It is also unclear what the local procedure will be in the Member States where the constituent entities are located for the taxation of these entities. It also seems that Member States will still be allowed to request local tax returns, despite central filing having been done by the UPE. Indeed, according to the Pillar Two Directive, information filed as part of the GloBE Information Return should allow the tax administrations where the constituent entities are located to evaluate the correctness of a constituent entity's liability for the top-up tax or the QDMTT, as the case may be, by application of domestic procedures, including for filing of domestic tax returns. But in case of discrepancy between the local tax returns and the central filing, what will the dispute resolution procedure available to the assessed constituent entity that is taxed based on a GloBE Information Return filed in another Member State by another member of its MNE group be? It remains thus to be seen how the DAC9 Proposal will evolve over the European legislative process.

If and when formally adopted at unanimity by the EU Council, Member States will have to implement the DAC9 Proposal by 31 December 2025 at the latest.

### Do you have further questions?



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